25-525

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 481. 190

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

JOSEPH M. OLIVER AND WILLIAM OLIVER, TRADING AS JOSEPH M. OLIVER & SON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED DECEMBER 5, 1884.

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1 UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver & Son, plaintiffs, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said John F. Hartranft, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this twenty-ninth day of October, A. D. one thousand eight hundred and eighty-four, and in the one hundred and ninth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

(Indorsed:) No. 65. Oct. sess., 1883. C. C. U. S., E. D. of Pa. Oliver et al. vs. Hartranft, collector, &c. Writ of error.

2 THE UNITED STATES OF AMERICA, *ss:*

To Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver and Son, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John F. Hartranft, collector of customs for the district of Pennsylvania, plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this third day of Nov., in the year of our Lord one thousand eight hundred and eighty-four.

WM. BUTLER, *Judge.*

3 I hereby accept service of within writ for defendants in erro
Joseph M. Oliver and William Oliver, trading, &c., as withi
named.

EDW'D L. PERKINS,
110 *So. 4th St., Philadelphia, Pa.,*
Att'y for Def'ts in Error.

Nov. 12, 1884.

Clerk of Supreme C't of U. S. will please enter my appearance for with
in-named defendants in error.

EDW'D L. PERKINS,
110 *So. 4th St., Phila'a, Pa.*

4 In the circuit court of the United States for the eastern district o
Pennsylvania in the third circuit.

JOSEPH M. OLIVER AND WILLIAM OLIVER,
trading as Joseph M. Oliver & Son,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS
for the district of Philadelphia.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit cour
of the United States in and for the eastern district of Pennsylvania, i
the third circuit. Of October sessions 1883, No. 65.

It is thus contained:
Be it remembered that, on the seventh day of December, in the year o
our Lord one thousand eight hundred and eighty-three, John
5 K. Valentine, esquire, attorney of the United States for the east-
ern district of Pennsylvania, comes into court here and presents
the petition of John F. Hartranft, for the removal of the cause from the
court of common pleas No. 3, for the county of Philadelphia, State o
Pennsylvania; which said petition, being filed, is in the words and of the
tenor following, to wit:

6 In the circuit court of the United States for the eastern district o
Pennsylvania, in the third circuit.

The petition of John F. Hartranft, collector of customs for the district
of Philadelphia, respectfully represents that a suit has been commenced
by summons case against him as defendant by Joseph M. Oliver and Will-
iam Oliver, trading as Joseph M. Oliver & Son, in the court of common
pleas No. 3, for the county of Philadelphia, in the State of Pennsylvania, to
December term, 1883, No. 187.

That the said suit is brought on account of an act done by him under
the revenue laws of the United States, as collector of the customs for the
district of Philadelphia; the said suit being to recover a certain sum of

money paid for and on account of the said plaintiffs, to the said defendant as collector aforesaid, as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common please No. 3, for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.,

J. F. HARTRANFT,
Coll.

John F. Hartranft, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn and subscribed before me this 6th day of Dec., 1883.

[SEAL.] EDW'D L. BUCHEY,
Not. Pub.

I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Def't.

(Indorsed:) No. 65. October sessions, 1883. Circuit court United States, eastern district of Pennsylvania, in the third circuit. Joseph M. Oliver vs. John F. Hartranft, collector, &c. Petition for certiorari. Filed December 7, 1883. John K. Valentine, attorney for petitioner.

7 Which said petition being filed, it was ordered by the court here that a writ of certiorari do immediately issue, directed to the court of common pleas No. 3, for the county of Philadelphia, State of Pennsylvania, which said writ was in the words following, to wit:

8 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set.:

The President of the United States to the honorable the judges of the court of common pleas No. 3, for the county of Philadelphia and State of Pennsylvania, greeting:

Whereas lately in your said court of common pleas No. 3 suit has been commenced against John F. Hartranft, collector of customs for the district of Philadelphia, by Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver & Son, of your December term, 1883, No. 187, which said suit, as it is said, is still pending before you in the said court of common pleas No. 3 undetermined, and whereas on the application of the said John F. Hartranft, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence that the said suit was brought on account of an

act done by him, under color of his office, as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiffs to the said John F. Hartranft, collector, &c., aforesaid, for duties on certain merchandise claimed to be due and owing from the said plaintiffs to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 3, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of January next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this seventh day of December, A. D. 1883, and in the 108th year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

9 (Indorsed:) No. 65 October sess., 1883. Circuit court, U. S. Oliver, et al., vs. Hartranft, collector, &c. Writ of certiorari. Brought into office Dec. 7, 1883. Jas. W. Fletcher. Returned & filed February 29, 1884.

10 EXEMPLIFICATION.

PHILADELPHIA COUNTY,
State of Pennsylvania, ss:

Among the records and proceeding of the court of common pleas No. 3 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 187, December term, 1883, to wit:

Docket entries, December term, 1883.

E. L. Perkins	Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver & Son, vs. John F. Hartranft, collector of customs at the port of Philadelphia. Nov. 22, 1883, bill of particulars filed. Dec. 7, 1883, certiorari brought into office from circuit court of U. S.	Sum's case. Exit Nov. 21, 1883. Ret. 1 Mon., Dec., 1883. Served.

Certified from the record this 8th day of February, A. D. 1884.
[SEAL.] C. G. McCULLOUGH,
Pro Proth'y.

11 JOSEPH M. OLIVER AND WILLIAM OLIVER, trading as Joseph M. Oliver & Son,
vs.
JOHN T. HARTRANFT, COLLECTOR OF CUSTOMS at the port of Philadelphia.
} Of Dec. T., 1883. C. P. No. . No. .

Issue summons case as above, returnable to first Monday of December next.

EDW'D L. PERKINS,
Att'y for Pl'ff.

To PROTH'Y of C. P.

(Endorsed:) 187. Dec., 1883. C. P. No. 3. Joseph M. Oliver et al. trading, &c., vs. John F. Hartranft, collector, &c. Præcipe for summons. Case. Filed Nov. 21, 1883. Edward L. Perkins, att'y for pl'ffs.

12 *Summons.*

THE COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

To the sheriff of the county of Philadelphia, greeting:

We command you that you summon John F. Hartranft, collector of customs at the port of Philadelphia, late of your county, so that he be and appear before our judges at Philadelphia, at our court of common pleas No. 3, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of December next, there to answer Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver & Son, of a plea of trespass on the case, etc., and have you then and there this writ.

Witness the honorable James R. Ludlow, president of our said court, at Philadelphia, the 21st day of November, in the year of our Lord one thousand eight hundred and eighty-three.

F. C. MANDERSON,
Pro Prothonotary.

13 (Indorsed:) 187. Dec. term, 1883. C. P. No. 3. Joseph M. Oliver et al., trading, &c., vs. John F. Hartranft, collector, &c. Summons. Edward L. Perkins, att'y for pl'ff.

Served John F. Hartranft, collector, &c., by giving to him December 1, 1883, a true and attested copy of the within writ and making known to him the contents thereof.

So answers—

A. ALBRIGHT,
Deputy Sheriff.
GEO. DE SKEIM,
Sheriff.

14 JOSEPH M. OLIVER, ET AL., TRADING, &C., *against* JOHN F. HARTRANFT, COLLECTOR, &C. } Dec. T., 1883, C. P. No. 3, No. 187.

PHILADELPHIA, *Nov*, 22*nd*, 1883.

SIR: This action is brought to recover duties illegally exacted by defendant as collector of customs at the port of Philadelphia, and the following is the bill of particulers therein, viz:

[Name of importer, Joseph M. Oliver and Son.]

	Description of goods.	Name of vessel.	Whence imported.	Date of invoice.
J. M. O. S.	One hundred and five cases of olive oil.	Bark Pellegra Madre.	Leghorn, Italy...	April 4, '83.
"	Ten cases of lamp olive oil.....	"	" "	" "
"	Fifty cases of olive oil.....	"	" "	March 29, '83.

Date of entry of custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision thereon.	
June 30, '83	$429.87 on July 7, '83, $5 76 Aug't 14, '83.	$435 63	Aug't 1, '83	Aug't 1, '83	Aug't 24, '83	7694 H. H.

JOHN F. HARTRANFT.

Very respectfully,

EDWARD L. PERKINS,
110 So. 4*th st.*, *Attorney for Plaintiff.*

To Hon. J. K. VALENTINE,
Attorney for Defendant.

14½ (Indorsed:) No. 187. Dec. T., 1883. C. P. No. 3. Joseph M. Oliver, trading &c., against John F. Hartranft, collector, &c. Bill of particulars. Filed Nov. 22, 1883. Edward L. Perkins, attorney for plaintiff.

15 JOSEPH M. OLIVER ET AL. *vs.* JOHN F. HARTRANFT, COL ECTOR, &C. } C. P. No. 3. Dec. term, 1883. No. 187.

The proth'y will enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Att'y for Def't.

To PROTH'Y, C. P.

(Endorsed:) 187. Dec. term, 1883. C. P. No. 3. Joseph M. Oliver et al. vs. John F. Hartranft, collect r, &c. Order for appearance. Filed Dec. 5, 1883. John K. Valentine, att'y for def't.

16 In the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1883, No. 65 (lately in the court of common pleas No. 3 for the county of Philadelphia, of December term, A. D. 1883, No. 187.

COUNTY OF PHILADELPHIA, *ss:*

John F. Hartranft, collector of customs at the port of Philadelphia, late of the county aforesaid, the defendant in this suit, was attached to answer Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver and Son, the plaintiffs in this suit, of a plea of trespass on the case, &c. Whereupon the said plaintiffs, by Edward L. Perkins, esq., their attorney, complain for that:

17 Whereas the defendant, heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and eighty-three, at the county aforesaid, was indebted to the plaintiffs in ten thousand dollars, for goods then and there sold and delivered by the plaintiffs to the defendant, at his request;

And also in the further sum of ten thousand dollars, for goods then and there bargained and sold by the plaintiffs to the defendant, at his request;

And also in the further sum of ten thousand dollars, for work then and there done, and materials for the same provided by the plaintiffs for the defendant, at his request;

And also in the further sum of ten thousand dollars, for money then and there lent by the plaintiffs to the defendant, at his request;

And also in the further sum of ten thousand dollars, for money then and there paid by the plaintiffs for the use of the defendant, at his request;

And also in the further sum of ten thousand dollars, for money then and there had and received by the defendant for the use of the plaintiff';

And also in the further sum of ten thousand dollars, for money found to be due from the defendant to the plaintiff' on account then and there stated between them;

And also in the further sum of ten thousand dollars, for money due to the plaintiffs by defendant upon promissory notes given by the defendant and held by the plaintiffs, and which are due and unpaid;

And also in the further sum of ten thousand dollars, for money due to the plaintiffs by the defendant upon his endorsements of certain

18 promissory notes which are due and have been duly presented for payment, and of which payment has been refused, and the defendant has been duly notified thereof;

And also in the further sum of ten thousand dollars, for interest then and there due and payable for the forbearance by the plaintiffs, at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned premises, respectively, then and there promised the plaintiffs to pay them the said several last-mentioned moneys, respectively, on request, yet the defendant has disregarded promises, and has not paid any of the said mon-

eys, or any part thereof, to the damage of the plaintiffs of ten thousand dollars.

And therefore they bring suit, &c.

EDWARD L. PERKINS,
Attorney for Plaintiffs,
P'r KEEFE.

(Endorsed:) No. 65. Oct. sess., 1883. United States cir. c't, east. dis't of Pa. Jos. M. Oliver et al., trading, &c., vs. John F. Hartranft, collector, &c.. Narr. Rule to plead in eight days or judgment, see req. E. L. Perkins, attorney for plaintiffs, p'r K. To John K. Valentine, esq., pro. def't. Filed January 12, 1884.

19 And afterwards, to wit, on the twenty-ninth day of February, A. D. 1884, the said defendant by John K. Valentine, esquire, his attorney, comes into court here and files his pleas, which said plea is as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, October sessions, 1883.

JOSEPH M. OLIVER ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } No. 65.

And the said defendant, by John K. Valentine, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Attorney for Defendant.

20 (Indorsed:) No. 65. October sessions, 1883. In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit. Joseph M. Oliver et al. vs. John F. Hartranft, collector, &c. Plea of defendant. Filed February 29, 1884. John K. Valentine, attorney for defendant.

21 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the sixth day of October, A. D. 1884, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come, to wit:

1. George B. Fisher.
2. William W. Whelen.
3. James H. Fister.
4. Michael McGarry.
5. John A. Geisinger.
6. James Simpson.
7. John A. Swope.
8. John B. Seidel.
9. Lafayette Rowland.
10. George D. McCreary.
11. William S. Johnston.
12. Howell McIntyre.

Who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid upon their oaths or affirmations aforesaid respectfully do say that they find specially as follows, to wit:

22 First. The jury find that in the year 1883 the plaintiffs were merchants in the city of Philadelphia, and the defendant was the collector of customs for the port of Philadelphia.

Second. That the plaintiffs imported into the port of Philadelphia one hundred and fifty-five cases of (salad) olive and ten cases of (lamp) olive oil in the bark Pellegra Madre, which sailed from Leghorn, Italy, on the ninth day of April, 1883.

Third. Said bark Pellegra Madre arrived at the port of Philadelphia on Saturday, the (30) thirtieth day of June, 1883, and was entered at the custom-house, Philadelphia, between the hours of 1 and 2 o'clock p. m., of that day. It was not practicable after that hour to remove said one hundred and sixty-five (165) cases of oil from the said vessel into any public store or bonded warehouse upon that day. The following day, July 1, 1883, was a Sunday.

Fourth. On July 7, 1883, the said one hundred and sixty-five cases of oil were entered in bond at the custom-house at Philadelphia.

Fifth. On July 7, 1883, the plaintiffs made a withdrawal entry for said goods, and offered to pay to the defendant duty thereon at the rate of twenty-five per cent. ad valorem, as provided by section 6 of the act of Congress, approved March 3, 1883, but the defendant refused to permit the said withdrawal entry, or to accept the duty at that rate.

Sixth. The said defendant, as collector aforesaid, exacted duty on one hundred and fifty-five cases of said importation of (salad) olive oil, gauging 645.63 gallons, at the rate of one (1) dollar per gallon, and on ten cases of said importation of (lamp) olive oil, gauging 100 gallons, at the rate of twenty-five (25) cents per gallon, amounting to the sum of six hundred and seventy dollars and sixty-three cents ($670.63), which said amount of duty was duly paid by said plaintiffs to said defendant within ten days after liquidation of the entry, the said plaintiffs making due protest July 31, 1883, against the exaction thereof, and claiming that said oil was dutiable at not over twenty-five per cent. ad valorem. The dates of the payment of the duties claimed to be in excess of that allowed by law were as follows: $429.87 paid on July 7, 1883, and $5.76 paid on August 14, 1883, the last sum ($5.76) being paid as additional duty after regaugement.

Seventh. From the time of the arrival and entry of said bark Pellegra Madre on June 30, 1883, until after payment by the plaintiffs of said duty on July 7, 1883, said vessel remained with unbroken hatches and with a custom-house inspector in charge of same.

Eighth. On July 31, 1883, the plaintiff made due appeal from said decision of said collector to the honorable Secretary of the Treasury, who on August 24th, 1883, by decision in writing of that date, affirmed the said decision of said defendant as collector, whereupon the said plaintiffs, on November 21, 1883, brought this suit.

23 Ninth. The amount of duty on said one hundred and sixty-five cases of oil, at the rate of twenty-five per cent. ad valorem, is the sum of $235, the same being of the value of $940. The amount of the duty thereon exacted by the defendant and paid by the plaintiffs under protest, is ($670.63) six hundred and seventy dollars and sixty-three cents.

The amount exacted by defendant over and above the amount claimed by the plaintiffs to be legally due, is the sum of ($435.62) four hundred and thirty-five dollars and sixty-two cents.

Finally. And the said jurors say that they are ignorant in point of law, whether upon the facts presented to them, they should find in favor of the plaintiffs or the defendant upon the issue joined, but that if the court should be of the opinion that the said plaintiffs are entitled to recover the money paid as duty on the said one hundred and sixty-five cases of oil, over and above the amount claimed to be due by said plaintiffs, then they find for said plaintiffs in the sum of four hundred and thirty-five dollars and sixty-three cents, with interest thereon from July 7, 1883, but if the court should be of the opinion that plaintiffs are not entitled to recover upon the facts as presented, and the law, then they find for the defendant.

24 And afterwards, to wit, on the seventh day of October, A. D. 1884, this cause being called for argument on special verdict, and having been argued by counsel for the respective parties, the court orders judgment to be entered on the special verdict in favor of the plaintiffs and against the defendant for the sum of four hundred and sixty-eight dollars and thirty cents ($468.30).

Whereupon judgment is entered accordingly.

25 In the circuit court of the United States for the eastern district of Penna. Of October sessions, 1883. No. 65.

JOSEPH M. OLIVER AND WILLIAM LIVER, trading as Joseph M. Oliver and Son,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the port of Phila.

Be it remembered that in the sessions of October, A. D. 1883, came the said plaintiffs into the said court and impleaded the said defendants in a certain plea of trespass on the case, &c.; in which the said plaintiffs declared (prout narr.), and the said defendants pleaded (prout pleas). And thereupon issue was joined between them. And afterwards, to wit, at a session of said court, held at a district aforesaid, before the honorable William McKennan & William Butler, judges of the said court, on the 6th day of October, A. D. 1884, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly impannelled (prout list of jurors); at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issues being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the jury found—

26 United Stated circuit court, eastern district of Pennsylvania.

JOSEPH M. OLIVER ET AL., TRADING, ETC.,
vs.
JOHN F. HARTRANFT, COLLECTOR, ETC.
No. 65. October sessions, 1883.

SPECIAL VERDICT.

First. The jury find that in the year 1883 the plaintiffs were merchants in the city of Philadelphia, and the defendant was the collector of customs for the port of Philadelphia.

Second. That the plaintiffs imported into the port of Philadelphia one hundred and fifty-five cases of (salad) olive oil and ten cases of (lamp) olive oil in the bark Pellegra Madre, which sailed from Leghorn, Italy, on the ninth day of April, 1883.

Third. Said bark Pellegra Madre arrived at the port of Philadelphia on Saturday, the (30) thirtieth day of June, 1883, and was entered at the custom-house, Philadelphia, between the hours of 1 and 2 o'clock p. m., of that day. It was not practicable after that hour to remove said one hundred and sixty-five (165) cases of oil from the said vessel into any public store or bonded warehouse upon that day. The following day, July 1, 1883, was a Sunday.

27 Fourth. On July 7, 1883, the said one hundred and sixty-five cases of oil were entered in bond at the custom-house at Philadelphia.

Fifth. On July 7, 1883, the plaintiffs made a withdrawal entry for said goods, and offered to pay to the defendant duty thereon at the rate of twenty-five per cent. ad valorem, as provided by section 6 of the act of Congress approved March 3, 1883, but the defendant refused to permit the said withdrawal entry, or to accept the duty at that rate.

Sixth. The said defendant, as collector aforesaid, exacted duty on one hundred and fifty-five cases of said importation of (salad) olive oil, gauging 645.63 gallons, at the rate of one (1) dollar per gallon, and on ten cases of said importation of (lamp) olive oil, gauging 100 gallons, at the rate of twenty-five (25) cents per gallon, amounting to the sum of six hundred and seventy dollars and sixty-three cents ($670.63), which said amount of duty was duly paid by said plaintiffs to said defendant within ten days after liquidation of the entry, the said plaintiffs making due protest July 31, 1883, against the exaction thereof, and claiming that said oil was dutiable at not over twenty-five per cent. ad valorem. The dates of the payment of the duties claimed to be in excess of that allowed by were as follows: $429.87 paid on July 7, 1883, and $5.76 paid on August 14, 1883, the last sum ($5.76) being paid as additional duty after regaugement.

Seventh. From the time of the arrival and entry of said bark Pellegra Madre, on June 30, 1883, until after payment by the plaintiffs of said duty, on July 7, 1883, said vessel remained with unbroken hatches and with a custom-house inspector in charge of same.

Eighth. On July 31, 1883, the plaintiff made due appeal from said decision of said collector to the honorable Secretary of the Treasury, who, on August 24th, 1883, by decision in writing of that date, affirmed the said decision of said defendant as collector, whereupon the said plaintiffs, on November 21, 1883, brought this suit.

28 Ninth. The amount of duty on said one hundred and sixty-five cases of oil, at the rate of twenty-five per cent. ad valorem, is the sum of $235, the same being of the value of $940. The amount of the duty thereon exacted by the defendant and paid by the plaintiffs under protest, is ($670.63) six hundred and seventy dollars and sixty-three cents. The amount exacted by defendant over and above the amount claimed by the plaintiffs to be legally due, is the sum of ($435.62) four hundred and thirty-five dollars and sixty-two cents.

Finally. And the said jurors say that they are ignorant in point of law whether upon the facts presented to them they should find in favor of the

plaintiffs or the defendant upon the issue joined, but that if the court should be of the opinion that the said plaintiffs are entitled to recover the money paid as duty on the said one hundred and sixty-five cases of oil over and above the amount claimed to be due by said plaintiffs, then they find for said plaintiffs in the sum of four hundred and thirty-five dollars and sixty-three cents, with interest thereon from July 7, 1883, but if the court should be of the opinion that plaintiffs are not entitled to recover upon the facts as presented, and the law, then they find for the defendant.

29 And afterwards, to wit, on October 7th, 1884, the said court entered judgment for the plaintiff aforesaid upon the verdict aforesaid, for the sum of four hundred and sixty-eight dollars and thirty cents ($468.30).

And thereupon the counsel for the said defendant did then and there except to the aforesaid judgment and opinion of the said court; and inasmuch as the said judgment and opinion, so excepted to, do not appear upon the record, the said counsel for the said defendant did then and there tender this bill of exceptions to the said judgment and opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided.

And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this third day of November, A. D. 1884.

WM. BUTLER. [L. S.]

30 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss.:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Joseph M. Oliver and William Oliver, trading as Joseph M. Oliver and Son, vs. John F. Hartranft, collector of customs for the district of Philadelphia, October sessions, 1883, No. 65, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this 22nd day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

(Indorsed:) No. . Sessions, 188 . Circuit court United States, eastern district of Pennsylvania. Certified copy.

(Indorsement on cover:) No. 481. John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff in error, vs. Joseph M. Oliver & William Oliver, trading as Joseph M. Oliver & Son. E. Pennsylvania C. C. U. S. Filed December 5, 1884.

125-532

Office Supreme Court U. S.
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JAMES H. McKENNEY.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

JOHN F. HARTRANFT, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
JOSEPH M. OLIVER AND WILLIAM OLIVER, trading as Joseph M. Oliver & Son.
} No. 190.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

JOHN F. HARTRANFT, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
JOSEPH M. OLIVER AND WILLIAM OLIVER, trading as Joseph M. Oliver & Son.
} No. 190.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

On the 30th day of June, 1883, between 1 and 2 o'clock p. m., the bark *Pellegra Madre* arrived at the port of Philadelphia, and was entered at the custom-house. On that vessel, the plaintiffs imported 155 cases of (salad), olive and 10 cases (lamp) olive oil. On the 7th of July,

1883, the oil was entered in bond at the custom-house and on the same day the plaintiffs made a withdrawal entry for the goods, and offered to pay the defendant, who was collector of the port, 25 per centum ad volorem, under the sixth section of the act of Congress of the 3d of March, 1883. The defendant declined to accept the duty at that rate, and assessed the duty for the 155 cases of (salad) olive oil at the rate of 81 a gallon, and on the 10 cases of (lamp) olive oil at the rate of 25 cents a gallon. The plaintiffs protested, paid the duty as assessed, appealed to the Secretary of the Treasury, and brought suit in time to recover the excess above what they claimed should have been paid.

The question involved in the case is whether the oil was chargeable with duty under title 33 of the Revised Statutes, or under the provisions of the act of the 3d of March, 1883, which went into effect on the 1st day of July, 1883. The question is raised upon a special verdict found by the jury and judgment entered thereon by the court in favor of the plaintiffs.

SPECIAL VERDICT.

First. The jury find that in the year 1883 the plaintiffs were merchants in the city of Philadelphia, and the defendant was the collector of customs for the port of Philadelphia.

Second. That the plaintiffs imported into the port of Philadelphia one hundred and fifty-five cases of (salad) olive and ten cases of (lamp) olive oil in the bark Pellegra Madre, which sailed from Leghorn, Italy, on the ninth day of April, 1883.

Third. Said bark Pellegra Madre arrived at the port of Philadelphia on Saturday, the (30) thirtieth day of June, 1883, and was entered at the custom-house, Philadelphia, between the hours of 1 and 2 o'clock P. M., of that day. It was not practicable after that hour to remove said one hundred and sixty-five (165) cases of oil from the said vessel into any public store or bonded warehouse upon that day. The following day, July 1, 1883, was a Sunday.

Fourth. On July 7, 1883, the said one hundred and sixty five cases of oil were entered in bond at the custum-house at Philadelphia.

Fifth. On July 7, 1883, the plaintiffs made a withdrawal entry for said goods and offered to pay to the defendant duty thereon at the rate of twenty-five per cent. ad valorem, as provided by section 6 of the act of Congress, approved March 3, 1883, but the defendant refused to permit the said withdrawal entry, or to accept the duty at that rate.

Sixth. The said defendant, as collector aforesaid, exacted duty on one hundred and fifty-five cases of said importation of (salad) olive oil, gauging 645.63 gallons, at the rate of one (1) dollar per gallon, and on ten cases of said importation of (lamp) olive oil, guaging 100 gallons, at the rate of twenty-five (25) cents per gallon, amounting to the sum of six hundred and seventy dollars and sixty-three cents ($670.63), which said amount of duty was duly paid by said plaintiffs to said defendant within ten days after liquidation of the entry, the said plaintiffs making due protest July 31, 1883, against the exaction thereof, and claiming that said oil was dutiable at not over twenty-five per cent. ad valorem. The dates of the payment of the duties claimed to be in excess of that allowed by law were as follows: $429.87 paid on July 7, 1883, and $5.76 paid on August 14,

This was established by the ruling of the court in *United States* v. *Vowell* (5 Cranch, 372), wherein Chief Justice Marshall says:

> The distinction taken by the counsel for the defendants in error between a district and a port of entry is correct. The duties did not accrue, in the fiscal sense of the term, until the vessel arrived at the port of entry. If the question had been doubtful the court would have respected the uniform construction which it is understood has been given by the Treasury Department of the United States upon similar questions. It is understood that in case of an increase of duty, the United States have always demanded and received the additional duty, if the goods have not arrived at the port of entry before the time fixed for the commencement of such additional duty, although the vessel may have arrived within the collection district before that time. The same rule of construction is to be observed when there is a diminution of duty.

In the case of *Arnold* vs. *The United States* (9 Cranch, 120) Justice Story declares:

> It is further contended that the importation was complete by the arrival of the vessel within the jurisdictional limits of the United States on the 30th day of June. We have no difficulty in overruling this argument. To constitute an importation so as to *attach the right* to duties, it is necessary not only that there should be an arrival within the limits of the United States, and of a collection district, but also within the limits of some port of entry. This was expressly decided in the case of the *United States* vs. *Vowell* (5 Cranch, 368.)

The same justice reiterates the same doctrine in *Meredith* vs. *The United States* (13 Peters, 494), as follows:

> The question has also been asked at what time the right of the government to the duties accrues in the fiscal sense of the terms. The answer is, At the time when the goods have arrived at the proper port of entry. This is the established rule adopted by the government in all cases where there has been a new act passed increasing or diminishing the duties to be paid on goods imported after a specified period.

The principle is re-asserted and applied in the cases of *The United States* vs. *Lyman* (1 Mason, 482); *Prince* vs. *The United States* (2 Gall., 204); *Perots* vs. *The United States* (Peters, C. C., 256); *The United States* vs. *Cobb* (11 Fed. Rep., 76); and *The United States* vs. *Benzon* (2 Cliff., 512).

The sixth section of the act of the 3d of March, 1883 (22 U. S. Stats., 489), provides:

> That on and after the 1st day of July, 1883, the following sections shall constitute and be a substitute for Title Thirty-three of the Revised Statutes of the United States.

The thirteenth section of the same act (22 U. S. Stats., 526) declares:

> That the repeal of existing laws, or modifications thereof, embraced in this act, shall not affect any act done, *or any right accruing* or *accrued*, or any suit or proceeding had or commenced, in any civil cause, before the said repeal or modifications; but all rights and liabilities under said laws shall continue, and may be enforced in the same manner as if said repeal or modifications had not been made; nor shall

> said repeal or modifications in any manner affect the right to any office, or change the term or tenure thereof.

As, then, the right of the United States accrued before the 1st day of July, 1883, that right was not affected by the act, and the duty was rightfully collected under section 2504, Revised Statutes, as it was done.

It may be suggested on the part of the plaintiffs below that the importation of the 30th of June, as an exception, came under the provisions of the tenth section of the act of the 3d of March, 1883 (22 U. S. Stats. 525), which provides:

> SEC. 10. That all imported goods, wares, and merchandise *which may be in the public stores or bonded warehouses on the day and year when this act shall go into effect*, except as otherwise provided in this act, shall be subjected to no other duty upon the entry thereof for consumption than if the same were imported respectively after that day; and all goods, wares, and merchandise remaining in bonded warehouses on the day and year this act shall take effect, and upon which the duties shall have been paid, shall be entitled to a refund of the difference, between the amount of duties paid and the amount of duties said goods, wares, and merchandise would be subject to if the same were imported respectively after that date.

This section, in language entirely unambiguous, is limited in its effects to goods, wares, and merchandise which on the day and year (to wit, the 1st of July, 1883) were in the public stores or bonded warehouses. There is no room for interpretation so as to include goods that were

not in the public stores or bonded warehouses on the 1st of July, 1883. The goods involved in this case were on shipboard, just as they had been for several months before, except an inspector was placed on board the ship. The ship could not be interpreted to be a warehouse, for, as it was ruled in *The United States* vs. *McDonald* (5 Wallace, 658):

> But no store could be constituted such a warehouse, unless it was a first-class fire-proof store, according to the classification of insurance offices, and was first proved to be such to the satisf ction of the Secretary of the Treasury, and was by him *authorized to be used* for the storage of dutiable merchandise. Until so selected by the Secretary of the Treasury, and the bond given by the owner as required, no store of a private owner could be used for the storing of dutiable importations, and when so selected and bonded, and placed under the customs locks, the store was under the control of the collector, and was as much a public store-house as one owned or formally leased by the United States.

The goods arrived too early to entitle them to the benefit of the reductions in the act, and it may also be they arrived too late to have been placed in the public stores or warehouses. To entitle them to the benefit of the tenth section they should have been there on or before the 1st day of July. They were not there until the 7th of July. The same principle that would entitle this importation to the benefit of the tenth section would entitle an importation to it which had been laying on board the ship in the port a week or a month before.

The time when the act takes effect is absolute, and while there can be no special reason assigned why goods, which

might be imported on the 30th day of June, as well as on the 1st day of July, should not have the benefit of the act, other than that Congress fixed the latter day, the fact that it is so fixed is reason sufficient to impose on the collector the duty of recognizing the 1st of July instead of the 30th of June as the time the law was to take effect. Neither does the fact that it is so fixed justify him in incorporating into section 10, in addition to the words "public stores or bonded warehouses," the words "or on shipboard in the port under charge of an inspector," which is substantially the effect of the interpretation placed by the court upon the law on entering judgment for the plaintiffs on the case stated.

The very question involved in this case, in which the ship arrived at 3 o'clock p. m. on the 30th of June, 1883, was decided in favor of the collector in the circuit court of the United States for the southern district of New York on the 6th day of December, 1886, by Wheeler, J., in the case of *Andrew* vs. *Robertson* (29 Federal Reporter, 246), in which the concluding paragraph of the opinion is:

> It is argued, however, that as goods imported prior to this time, and had gone to bonded warehouse, would come under the provisions of the new act, it must have been the intention of congress that these goods should, and that for this purpose the deck of the vessel should be considered the warehouse. This question must be determined by the apparent intention of congress, which must be gathered from the language of the act itself. Congress fixed upon the first day of July as the day when the new act should take effect. The right to these duties, therefore, ac-

crued under the old act, and was saved by the thirteenth section, unless the provisions of the tenth section prevented. Those provisions do not include this merchandise in their description. Nothing is included but such goods as are in bonded warehouse or public stores at that time, and are entered for consumption afterwards. These goods were on board the ship at that time, and not in the public store or warehouse in the sense of this section.

It is, therefore, respectfully submitted the judgment in this case should be reversed, and judgment entered on the special verdict in favor of the defendant.

G. A. JENKS,
Solicitor-General.

No. 190 October Term, 1887

IN THE

Supreme Court of the United States

John F. Hartranft, Collector of Customs, etc.

Plaintiff in Error

vs.

Joseph M. Oliver and William Oliver, trading, etc.

Defendants in Error

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania

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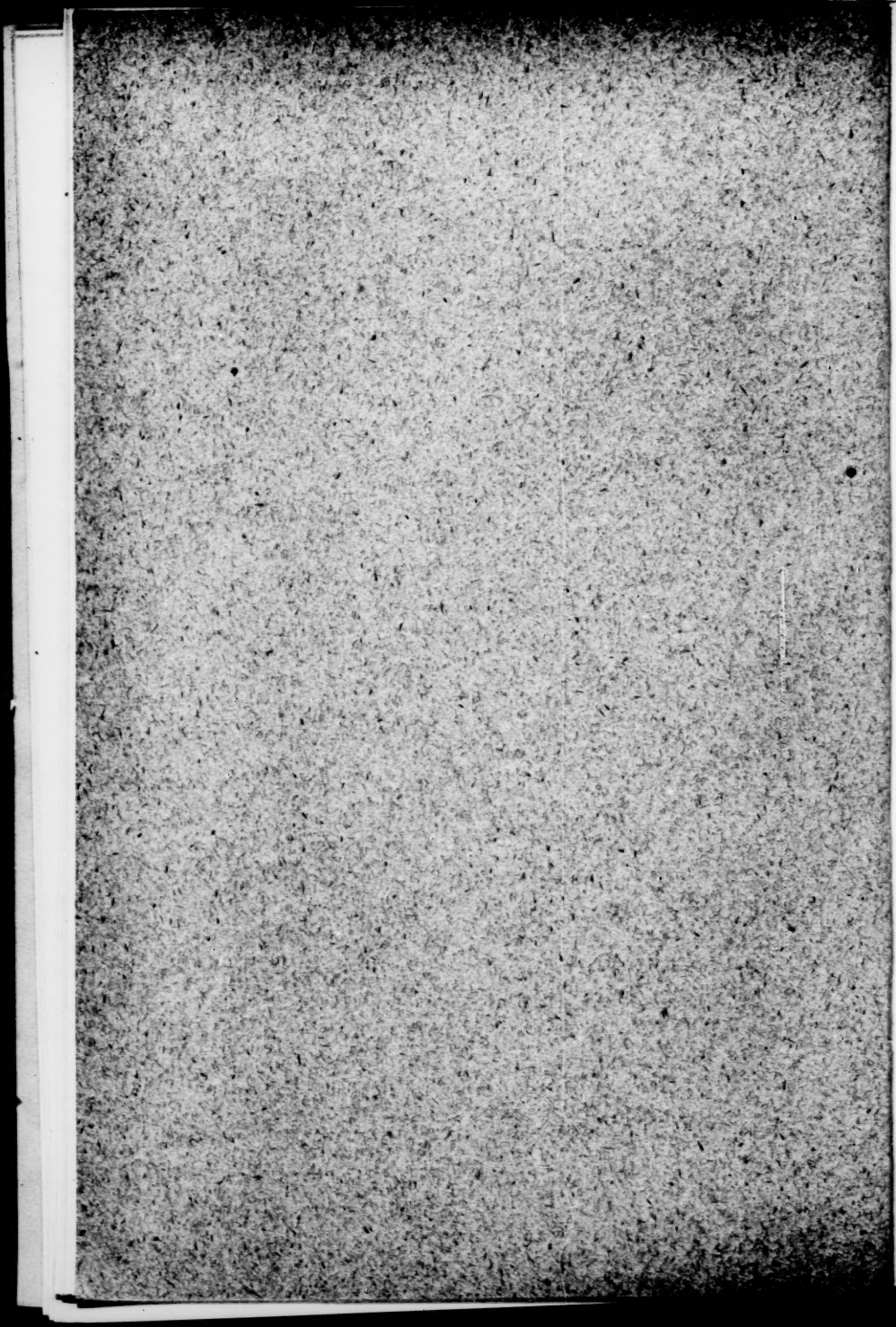
Brief for Defendants in Error

EDWARD L. PERKINS
110 South Fourth Street
Philadelphia, Pa.

(J 21)



IN THE

Supreme Court of the United States.

October Term, 1887. No. 190.

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS, FOR THE DISTRICT OF PHILADELPHIA,

Plaintiff in Error,

vs.

JOSEPH M. OLIVER AND WILLIAM OLIVER, TRADING AS JOSEPH M. OLIVER & SON,

Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA, OF OCTOBER SESSIONS, 1883. No. 65.

Brief of Argument for the Defendants in Error.

The question of law arising on the facts found by the Special Verdict in this Case, involves the construction of the following Sections of the Act of Congress, approved March 3, 1883, with respect to goods on vessels which had arrived and entered in bond at the Custom House prior to July 1, 1883, but which remained on board such vessels and were entered for consumption after that date, viz:

"SEC. 6. That on and after the first day of July, 1883, the following sections shall constitute and be a substitute for Title 33 of the Revised Statutes of the United States."

"SEC. 2502. There shall be levied, collected, and paid upon all articles imported from foreign countries, and mentioned in the Schedules herein contained, the rates of duty which are by the Schedules respectively prescribed, namely:"

"Schedule A., Chemical Products."

"92. All preparations known as * * * * expressed oils * * * * and not specifically enumerated or provided for in this Act, twenty-five per centum ad valorem."

(NOTE.—Olive oil and salad oil being expressed oils, and not specifically enumerated or provided for, are, as the defendants in error contend, liable only to a duty of twenty-five per centum ad valorem, and not to the higher duty imposed under the previous law.)

"SEC. 10. That all imported goods, wares and merchandise, which may be in the public stores or bonded warehouses on the day and year when this Act shall go into effect, except as otherwise provided in this Act, shall be subjected to no other duty upon the entry thereof for consumption than if the same were imported respectively after that day; and all goods, wares and merchandise, remaining in bonded warehouses on the day and year this Act shall take effect, and upon which the duties shall have been paid, shall be entitled to a refund of the difference, between the amount of duties paid and the amount of duties said goods, wares and merchandise would be subject to if the same were imported respectively after that date."

The facts found by the special verdict bring this case clearly within the spirit and meaning of the Act of March 3, 1883.

The oil in question arrived in port on the afternoon of Saturday, June 30, 1883, and from the time of its arrival the vessel containing it was in charge of a Custom House Inspector, and so remained with sealed and unbroken hatches during (and after) the first day of July, 1883.

It is *ex necessitate* conceded by the plaintiff in error that if said oil had been physically removed from the vessel on June 30 into a bonded warehouse and had remained there during July 1, it would under the letter as well as the spirit of the Act, have been chargeable only with the reduced duty under the Act of 1883. But, as a fact (found by the special

verdict), "*it was not practicable after that hour* (1.35 *P. M.*), *to remove the said one hundred and sixty-five* (165) *cases of oil from the said vessel into any public store or bonded warehouse on that day*" (*June* 30).

The following day, July 1, 1883, being Sunday, it could not be removed to a bonded warehouse on that day.

It is submitted that the true meaning and spirit of the Act of 1883 is, that all goods which arrived prior to July 1, 1883, but which remained on that day in the actual control and custody of the Custom House officials, not entered for consumption, and not in the control of the owner, are dutiable under that Act.

Duties accrue on the arrival of the vessel at the port of entry.

United States vs. *Vowell et al.*, 5 Cranch, 368.

Arnold vs. *United States*, 9 Cranch, 104.

This, however, does not settle the amount of duties so accruing. They must be adjusted in conformity with the revenue laws then applicable.

From the moment of their arrival goods are in the custody of the United States in contemplation of the law, and the United States has a lien on them from the time of their arrival in port.

Harris vs. *Dennie*, 3 Peters, 305.

This meaning and intention appears in the statute itself, Sec. 10.

The time for subjecting to duty goods imported before the Act took effect, is "*upon the entry thereof for consumption*," *i. e.*, at the time when the goods pass from the control of the Custom House to that of the owner. It is the *leading idea* of this section that goods imported prior to July 1, 1883, but not entered for consumption until after that date, "shall be subjected to no other duty, *upon the entry thereof for consumption*, than if the same were imported respectively after that day."

This intention is still further accentuated in the latter clause of the section, which provides that even if the duties

under the prior law had been actually paid on goods arrived prior to July 1st, 1883, but remaining on that day in bonded warehouse, the excess between the duty so paid and that chargeable under the Act of 1883, should be refunded. The expression "*in public stores or bonded warehouses*" is only descriptive. Ordinarily, goods which are in the control of the Custom House, *are in fact* in public store or bonded warehouse, and that expression would naturally be used by Congress in framing a general statute to give form to that idea.

But goods, just arrived, on board ship, and in custody of a Custom House Inspector, preliminary to, and during the time absolutely necessary for their removal to a bonded warehouse, are, to all intents and purposes, and so far as the Government is concerned, in the same position as if technically in a bonded warehouse.

It can make no possible difference to the Government whether the goods were literally or constructively, "*in bonded warehouse*," on July 1st, 1883. When goods are physically in a bonded warehouse they cannot be removed without a permit from the Collector. When on shipboard, in charge of a Custom House Inspector, they are in precisely the same position. Collectors are required by law to put an Inspector on board any vessel "*immediately on her first coming within such district * * * for the better securing the collection of the duties.*" (*Rev. Stat. of U. S.*, 2875); and it is the duty of the Inspector to "*suffer no merchandise to be unloaded or otherwise removed from such vessel without a permit in writing from the Collector of the Port.*" (*Ibid., Sect.* 2876.)

Nor are the defendants in error without analogous authority from the Executive branch of the Government itself, in support of their contention with regard to the *time* in which goods shall be considered as "*remaining in public stores and bonded warehouses.*"

By Act of March 28th, 1854, Section 4, now included in Section 2971 of Revised Statutes, providing how goods deposited in public stores or bonded warehouses may be withdrawn, it is enacted that "*any goods remaining in public store*

or bonded warehouse beyond three years shall be regarded as abandoned to the Government."

The Treasury has decided, that *part of the time limited to their remaining in warehouse, includes time on shipboard,* after the arrival of the vessel. (*Treasury Reg. of* 1857, *Articles* 437 *and* 438.

Also, for a further construction of the words above quoted from the Act of March 28, 1854. See:

Treasury Reg. of	1884,	Articles	1020 and	1021
"	" 1874,	"	760 and	761
"	" 1857,	"	531	

From the foregoing Articles of the Treasury Regulations, it is clear that the Government has for years understood the terms "*remaining in public store and bonded warehouse*" to include the time the goods are on shipboard after the arrival and entry of the vessel.

So far, therefore, as the object of the Act of 1883 is concerned, the goods in question were *constructively* in bonded warehouse, and this case is thus brought within the general intent and application of the Act and Section 10.

If it be asserted by the plaintiff in error that Section 10 is not applicable, and that Congress, though using the same terms in the Act of 1883, intended them to have a different signification from that given them in the prior Act, the answer is clear, that these goods, not having been entered for consumption till after July 1, 1883, are equally entitled to entry under under the provisions of Section 6.

There are no express words to show that Congress intended to confer on the terms of this Act a different signification from that given to them under prior laws, nor is there any logical reason from which any such distinction by the Legislature can be inferred, and, in the absence of express terms, or a natural and legal logical intendment including them, this Court will not assume a different meaning to the terms of the Act from that which the same terms had received under prior Acts. The legal assumption must be the other way.

Two classes of goods are provided for by the Act of 1883, viz.: those arriving after the Act took effect, and those arriving prior to that date, but which had not been entered for consumption till subsequently.

It would be a forced construction, and one that this Court would not announce against the citizen, to say that Congress intended that the application or non-application of the Act as to any particular lot of goods arriving prior to July 1, 1883, should depend upon whether those goods arrived a few hours or a few days before that date, or upon the speed upon which it might be possible to unload a particular cargo.

On the other hand, it is clear, as the appellees contend, that Congress did intend, and has sufficiently expressed its intention, that the Act should apply to all goods arriving prior to July 1, 1883 (whether a long or short time prior thereto, and whether the duties had been, in fact, paid or not) provided only that the goods had not been entered for consumption, and that they remained in Government custody on that day.

Such an intention the Court is asked to enforce by enforce by entering judgment for the defendants in error, and thus holding that the oil in question, while on shipboard in charge of an Inspector, was constructively in bonded warehouse or public store, within the meaning, and for all the purposes of the said Act, and is dutiable thereunder.

It is a well-settled principle in the interpretation of statutes, that though a matter may not be within the letter of the law, yet if it can be gathered from the statute, that it was within the spirit, meaning and intention of the law, the statute will apply.

It would be a supererogation of learning to cite authorities in support of this universally recognized proposition, but its mode of statement in some of the rules for the construction of statutes, may be briefly quoted from Potter's Dwarris on Statutes (edition of 1871).

Rule 9 (page 144): "A thing within the *intention* is within the statute, though not within the letter; and a thing within the *letter* is not within the statute, unless within the intention."

People vs. *Utica Insurance Co.*, 15 Johns, 358.

The duty of the Court, being satisfied of *the intention* of the Legislature, clearly expressed in a constitutional enactment, is to give effect to that intention, and not to defeat it by adhering too rigidly to the mere letter of the statute, or to technical rules of construction.

Oates vs. *National Bank*, 10 Otto, 244.

And the Court will discard any construction that would lead to absurd or unjust consequences.

United States vs. *Kirby*, 7 Wall., 482.

Rule 23 (Vattel's Maxims; Potter's Dwar. Stat., page 129): "To violate the spirit of the law by pretending to respect the letter of it, is a fraud no less criminal than an open violation of it."

Rule 31. (*Ibid.*, p. 130): "When the subject relates to things favorable, we ought to give the terms all the extent they are capable of in common use."

"Such constructions ought to be put upon a statute, as may best answer the intention which the makers had in view. * * * And when such intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, *although such construction seems contrary to the letter of the statute.*"

Sedgwick on Const. and Statutory Law, 195, 196.

People vs. *Utica Ins. Co.*, *supra.*

Qui haeret in litera, haeret in cortice.

A chief object of the Act of 1883 was to *reduce duties*. It is therefore in the nature of a remedial statute and should be so construed as to effectuate the intent. In such a case, "*everything is to be done in advancement of the remedy, that can be given consistently with any construction that can be put upon it.*"

Sedgwick, p. 309.

It is also, a general principle that statutes levying duties, are to be construed liberally in favor of the importer and against the Government.

United States vs. *Wigglesworth*, 2 Story Reps., 269.

United States vs. *Hodson*, 10 Wallace, ~~113~~. 406

Cliquot's Champagne, 3 Wallace, 145.

Also cases cited in Sedgwick, p. 288. *Note a.*

If there be any doubt, it is to be resolved in favor of the importer, "*as duties are not to be imposed on the citizen on vague or doubtful interpretations.*"

Hartranft vs. *Wiegmann*, 121 U. S. Reps., 616.

The only case which can be cited with any effect against the defendants in error, is that of

Andrews vs. *Robertson*, 29 Fed. Rep., 246.

This case was decided in the United States Circuit Court for the Southern District of New York against the importer, and involved the question at issue in this action.

The report of the case, except as to the decision of WHEELER, J., is exceedingly meagre, and it does not appear that the cause was strenuously combated. It was decided on the ground that the duties accrued under the old Act, and were saved by the provisions of Section 13 of the Act of 1883.

It is, however, respectfully submitted on the ground of the foregoing argument, that the construction announced by Judge Wheeler cannot be legally sustained, but that the provisions of Section 10 do, in law, include the goods in question.

In any event, however, that decision was by a Court of equal jurisdiction, and though of equal, of no greater legal talent and ability than that which composes the learned Court to which the writ of error in this case was directed, and whose decision to the opposite effect, was rendered over two years prior to that in *Andrews* vs. *Robertson*.

These two opposite decisions certainly show the doubt which exists in the judicial mind with respect to the proper

construction of the Act of 1883, and if this Court shall also be in doubt as to the question, that doubt will be resolved in favor of the defendant in error.

Hartranft vs. *Wiegmann*, 121 U. S. Reps., 616.

It was from no fault of the importers in this case, and with no intent to evade liability that the oil was not physically removed into a bonded warehouse on June 30th or July 1st, *but because it was practically impossible*, and the law will not punish for a failure to do an impossible act. The said Act (doubtless by inadvertence), was, by its terms, made to take effect on July 1st, 1883, which was Sunday, and it is well settled that if the day of performance of a statute or contract fall on Sunday (except in case of commercial paper falling due), performance is not required till the day following.

The cotemporaneous construction put upon Section 10 of said Act of 1883 by the Secretary of the Treasury in his general circular to Collectors of Customs, dated May 19th, 1883, favors the construction of the Act contended for by the defendants in error. It was there *held:*

1. "That all goods imported before said Act takes effect, and which are entered in bond on or before that date, and for which permits to land, designating the warehouse, have been issued, *and which have not then been delivered on payment of duties*, are to be regarded as subject to duty under said Act. *This rule will prevail, whether the goods are actually within the walls of a bonded warehouse on that day, or on the dock*, OR ON SHIPBOARD IN PORT or undergoing transportation in bond, either after appraisal or under the immediate transportation Act."

2. "Goods in general order store, not entered on that day, are to be regarded as in public store or bonded warehouse."

(Synopsis of Treasury Decisions, No. 5719, p 236.)

There is no more reason why "*goods in general order store not entered on that day*" are "*to be regarded as in bonded warehouse*," than why goods ON SHIPBOARD IN PORT, not entered on that day, should be so regarded.

It has been held that "*private bonded warehouses*" are public storehouses within the meaning of the Acts of Congress.

United States vs. *MacDonald*, 5 Wallace, 647.

The Government has recognized *the importing vessel as a warehouse.*

Treasury Regulations of 1884, Art. 783, p. 331.
" " " " Art. 753, p. 309.

Finally we submit that it would be an unreasonable construction of Section 10 of the Act of 1883, to hold that while goods which arrived and were entered in bond weeks or months before the Act took effect, and goods which arrived and were entered subsequently to that time are within the statute, yet that goods which arrived the day before the Act went into force and were entered afterwards, meanwhile remaining on shipboard in the custody of a United States Inspector, are not within the Act.

EDWARD L. PERKINS,
Attorney for Defendants in Error.

APPENDIX.

Copy of Protest.

Philadelphia July 31, 1883.

HON. JOHN F. HARTRANFT,
Collector of Customs,
Philadelphia.

SIR:—We hereby protest against the payment of one dollar per gallon (155 cases) and twenty-five cents per gallon (10 cases) duty exacted by you on 105 cases of olive oil marked $\frac{J.M.O.}{S.}$, amounting to $680.94, imported by us per bark *Pellegra Madre*, from Leghorn, June 30, 1883, Warehouse Entry No. 6,896, liquidated July 24, 1883.

We protest on the grounds that the said oil was in bond on the first day of July, the day the new tariff law went into effect, and such being the case, the said oil is dutiable at the rate of 25 per cent. *ad valorem*, under T. I., 92, and not as returned by the Appraiser; we paid the duty demanded of us, under compulsion, and only for the purpose of getting possession of our merchandise.

We have the honor to be,
Very respectfully,
Your obedient servants,
JOSEPH M. OLIVER SONS.

Copy of Appeal.

Philadelphia, July 31st, 1883.

HON. CHAS. J. FOLGER,
Secretary of the Treasury,
Washington, D. C.

SIR:—We hereby submit this as our appeal from the decision of the Honorable Collector of Customs at this Port, in exacting one dollar per gallon (155 cases), and twenty-five cents per gallon (10 cases) duty on 165 cases of olive oil, marked $\frac{J.\ M.\ O.}{S.}$, amounting to $680.94, imported by us per bark *Pellegra Madre*, from Leghorn, June 30th, 1883, warehouse entry No. 6896, liquidated July 24th, 1883.

The *Pellegra Madre* arrived on the thirtieth day of June, in the afternoon, in time to enter at the Custom House, *but the consignees of her cargo were not aware of her arrival until the following Monday, July 2d*; on the seventh day of July we made warehouse entry at the new rate of duty, but said entry was refused by the Collector of Customs on the ground that the duty under the old tariff would govern, and subsequently we were compelled in making our withdrawals for consumption to make them at the same rate, *i. e.*, old duty. We claim that the said merchandise was, to all intents and purposes, in warehouse, as they were in bond and in the uninterrupted custody of the Customs officers up to the time of our withdrawal. In the exportation of merchandise direct from warehouse for benefit of drawback under Article 814, C. R., the Department has justly held that merchandise need not actually be in warehouse as long as it has been in the uninterrupted custody of the Customs officers.

It appears to us that if merchandise in the warehouse on the first day of July is entitled to be withdrawn at the new rate of duty, and it certainly is under the law, merchandise in warehouse after that date would be entitled to the same privilege. It is true that the merchandise was not actually in the warehouse on the first day of July, but it was in the warehouse after that date, and if the law covers merchandise in warehouses on that date, it certainly covers

merchandise in warehouse after that date; the warehouse entry was not made before the first of July, but it was made afterward.

If the law embraces merchandise arriving by vessels a year ago, it can be construed to embrace merchandise arriving by vessels one day before the new tariff took effect.

Awaiting your decision, which we hope will be favorable,

We have the honor to be, very respectfully,

Your obedient servants,

JOS. M. OLIVER SONS.

Copy of Department Decision.

TREASURY DEPARTMENT,
Washington, D. C., Aug. 24, 1883.

COLLECTOR OF CUSTOMS,
Philadelphia, Pa.

SIR:—This department is in receipt of your letter of the 20th inst., submitting the Appeal (7,694) of Messrs. Joseph M. Oliver Sons, from your assessment of duty at the rate of $1.00 per gallon on salad oil and 25 cents per gallon on olive oil, imported by them per *Pellegra Madre*, June 30, 1883, and entered for warehouse July 7, 1883.

The appellants claim that the oil in question is entitled to entry at the rate of 25 % *ad valorem*, under the Act of March 3d, 1883 (T. I., *New*, 92). It is understood from the papers that the oil was not in public store or bonded warehouse on July 1st, 1883, and had not been entered in bond before that date, and that duty at the rate above specified was assessed by you under the department decision of July 6th (S. S. 5,796).

Your decision is therefore affirmed.

Very respectfully,

H. F. FRENCH,

Acting Secretary

No. 190 October Term, 1887

Supreme Court of the United States

HARTRANFT, COLLECTOR, ETC.

Plaintiff in Error

VS.

OLIVER *ET AL.*, ETC.

Defendants in Error

SUPPLEMENTAL APPENDIX

EDWARD L. PERKINS
For Defendants in Error
Philadelphia, Pa.

(J 44)

HARTRANFT, COLLECTOR, ETC., *vs.* OLIVER *et al.*, TRADING, ETC.	October Term, 1887. Supreme Court of U. S. No. 190.

SUPPLEMENTAL APPENDIX

To Defendants' Brief.

Treasury Customs Regulations, etc., cited at the argument of above case March 22d, 1888, and herewith submitted by consent of the Court and the attorney for plaintiff in error.

Regulations of 1884.

DUTIES OF SURVEYORS.

ARTICLE 1395 (page 552).

"At ports where there is a Collector and Surveyor, the Surveyor is required, under directions of the Collector. * * * *

THIRD.—To visit or inspect the vessels which arrive in his port, * * * * * * *

FOURTH.—*To put on board* of each of said vessels *one or more inspectors*, IMMEDIATELY after their arrival in his port."

DUTIES OF BOARDING INSPECTORS.

ARTICLE 1426 (page 560).

"It is the duty of boarding inspectors, as such, to board all vessels arriving from foreign ports, and after ascertaining

the name of vessel and master, and port of departure, in each case, to examine the documents relating to vessel and crew, and certify the manifest of cargo, verifying the same by actual examination, AND TO SEAL OR OTHERWISE SECURE THE HATCHES and openings till the necessary permits for unlading can be granted and a discharging officer assigned to the vessel. * * * * *"

Regulations of 1857.

WAREHOUSES.

ARTICLE 438 (page 223).

"The appraisers having reported on the invoice, the weigher, gauger, or measurer, having made his return of the quantity, the damage, if any having been ascertained, and the dutiable value of the merchandise and duties finally determined, the importer, consignee or agent may at any time within three years FROM THE DATE OF IMPORTATION, withdraw from warehouse any quantity of the same, not less than an entire case or package, or not less than one ton in weight if the merchandise be in bulk. * * * * *"

SALES OF UNCLAIMED MERCHANDISE, ETC.

ARTICLE 531 (page 289).

"All merchandise duly bonded, and so remaining in public store for the space of three years FROM THE DATE OF IMPORTATION; all merchandise in respect to which there is a failure or neglect to pay the duties within the time prescribed by law, and so remaining in public store for a period of one year, shall be sold at public auction, in some public or private warehouse, within thirty days after the expiration of the several periods before mentioned, respectively."

Regulations of 1874.

UNCLAIMED AND GENERAL ORDER GOODS.

ARTICLE 760 (page 361).

"At any time within one year AFTER THEIR IMPORTATION, goods so taken possession of may be claimed and entered for warehouse or consumption in the same manner as other goods. If claimed and entered for warehouse, the LIABILITY TO ADDITIONAL DUTY WILL ATTACH at the expiration of oneyear from THE DATE OF IMPORTATION, NOT OF ENTRY. But if not so entered within one year, they must be sold at public auction. * * * "

ARTICLE 761.

" Bonded goods remaining in warehouse without payment of duties for the space of three years FROM THE DATE *of* ORIGINAL IMPORTATION must be in the same manner sold at the first quarterly sale thereafter, distant not less than three weeks. * * * "

Regulations of 1884.

UNCLAIMED AND GENERAL ORDER GOODS.

ARTICLE 1020 (page 439).

"At any time within one year after importation, goods so taken possession of may be claimed and entered for warehouse or consumption in the same manner as other goods. If claimed and entered for warehouse, the liability to additional duty will attach at the expiration of one year FROM THE DATE OF THEIR IMPORTATION INTO THE UNITED STATES. But if not so entered within one year, they must be sold at public auction * * * ."

ARTICLE 1021.

" Bonded goods remaining in warehouse without payment of duties for the space of three years FROM THE DATE OF ORIGINAL IMPORTATION must be sold * * * ."

Regulations of 1884.

VESSEL AS WAREHOUSE.

CHAPTER III.—ARTICLE 753 (page 309).

"THE IMPORTING VESSEL MAY BE CONSIDERED THE WAREHOUSE without charge, *during the time the examination is being made by the appraisers*, and from it deliveries may be made for transportation; but should the examination be delayed beyond the time allowed by law for the goods to remain on board, they must be sent, under the usual warehouse permit, to such bonded warehouse as the importer may select, until the examination is completed * * * * *."

(Under the existing law the Collector *holds the goods on board* the vessel *for three days after entry of the vessel*, and *will not* send into bonded warehouse, or allow the master, owner or consignee so to do, *till the expiration of said three days*. The *custom* of the port of Philadelphia before the passage of the "Dingley Act," approved June 26, 1884, allowed TWO days (*Sundays* and holidays excepted); the *custom* of other ports, before that date, varied. The Dingley Act amended Section 2966 of Revised Statutes, so that same reads as follows, viz:)

"When merchandise shall be imported into any port of the United States from any foreign country in vessels, * * * and when it does not appear by the bills of lading that the merchandise so imported is to be immediately delivered, the Collector of the customs may take possession of the same, and deposit it in bonded warehouse at the request of the owner, master or consignee of the vessel, *on three days' notice to such Collector, after the entry of the vessel*."

Revised Statutes, Sec. 2966, as amended.

Synopsis of Treasury Decisions for 1884. Page 277.

WAREHOUSE AND IMMEDIATE EXPORTATION.

ARTICLE 783 (page 331).

"* * * * The export bond having been duly executed by the party making entry, and the usual oaths taken,

the Collector, together with the Naval Officer, shall issue a permit, addressed to the inspector of the vessel by which said goods were imported, directing him to send the goods to the vessel in which they are to be exported, THE IMPORTING VESSEL BEING CONSIDERED THE WAREHOUSE.

The form of permit shall be as follows: * * "